IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1279

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT *Appellant,*

versus

DEPARTMENT OF PROPERTY VALUATION OF THE STATE OF ARIZONA *Appellee.*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The appellant appeals from the judgment of the Supreme Court of the State of Arizona, entered November 5, 1976, and from the denial of the Motion for Rehearing, entered December 15, 1976, and submits this Statement to show that this Court has jurisdiction over the appeal, and that a substantial question is presented.

OPINIONS BELOW

The opinions of the Arizona Supreme Court is not yet reported. The opinion of the Arizona Court of Appeals is reported at 27 Az.App. 110, and at 551 P.2d

559. The opinions of those courts are set forth in full as Appendices A and B, respectively.

JURISDICTION

This is an action in which the appellant contends that the Arizona statutes dealing with judicial review of property valuation determinations preclude the appellant from asserting its Fourteenth Amendment rights, and that these statutes, to the extent of such preclusion, are unconstitutional. The judgment of the Arizona Supreme Court was entered November 5, 1976, and on December 15, 1976 that Court denied the Motion for Rehearing. On that same date, December 15, 1976, the Court's mandate issued. The federal constitutional issues were presented and briefed to the Arizona courts at all levels, beginning with the Motion for Summary Judgment before the Superior Court, and continuing through the appeals before the Court of Appeals and the Supreme Court. Both the Court of Appeals and the Supreme Court ruled in favor of the validity of the state statutes. Jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of this Court to review the judgment on direct appeal in this case: *Warren Trading Post Co. v. The Arizona State Tax Commission*, 380 U.S. 685 (1965); *McCollum v. Illinois*, 333 U.S. 203 (1948); *Charleston Federal Sav. & Loan Assn. v. Alderson*, 324 U.S. 182 (1945).

STATUTES INVOLVED

Arizona Revised Statutes, Sections 42-151, 42-152, and 42-204 are set forth in Appendix C hereto.

QUESTION PRESENTED

Whether conditioning the appellant's conceded Fourteenth Amendment right to present its case (that the State Department of Property Valuation has discriminated against it in valuing its property) on the payment of a tax that the highest State authority to consider the matter (the Board of Property Tax Appeals) has held is not due and owing, violates the appellant's constitutional rights of due process and equal protection.

STATEMENT OF THE CASE

The appellant, Salt River Project Agricultural Improvement & Power District (hereinafter referred to as "the Project") is a municipal subdivision of the State of Arizona. Together with the Salt River Valley Water Users Association, an Arizona corporation, it operates, as agent of the United States, the oldest and largest of the federal reclamation projects. As a federal reclamation project, the Project's principal responsibilities concern the conservation and delivery of water. It is the major supplier of water within its boundaries, which include much of the Phoenix metropolitan area. As an adjunct to, and in support of its water conservation and distribution functions, the Project is also authorized to engage in the generation and distribution of electricity. It is one of three major suppliers of electricity in the State of Arizona.

The Arizona Constitution exempts entities such as the Project from state property taxes. See Article 13, § 7 and Article 9, § 2 of the Arizona Constitution. Since 1964, however, Arizona statutes have permitted the Project, if it chooses to do so, to make voluntary contributions in lieu of property taxes. A.R.S. § 45-

2201 et seq. The statutes further provide that the amount of the voluntary contribution is determined according to the same general standards as the ad valorem taxes on other Arizona property, that is, by determining the "full cash value" of the property and then applying the appropriate tax rates to it. The procedure for determing full cash value is also supposed to be the same as for other property, namely, original determination by the appellee, Department of Property Valuation, appeal to the Board of Property Tax Appeals, and then judicial review, beginning with the trial court of general jurisdiction in Arizona, the Superior Court. A.R.S. §§ 45-2202 and 45-2204.

The statutes provide two separate avenues by which an ad valorem property tax or voluntary contribution case may be taken from the Board of Property Tax Appeals (Appeal Board) to the Superior Court. Under A.R.S. § 42-151 an appeal may be brought "by filing a notice of appeal with the Superior Court of the county where the property which is the subject of the appeal is located". The procedure for cases brought under Section 151 — and the limitation of permissible issues under Section 151 cases to valuation and classification — are contained in A.R.S. § 42-152. Under the Section 151 procedure, however, as the Arizona courts have held on several occasions, only issues of valuation may be considered; constitutional, discrimination issues may not. *McCluskey v. Sparks*, 80 Ariz. 15, 291 P.2d 791 (1955); *Maricopa County v. Chatwin*, 17 Ariz.App. 576, 499 P.2d 190 (1972).

That limitation on the issues that can be raised in a Section 151 proceeding was reaffirmed in this case, expressly by the Court of Appeals, and implicitly by the Supreme Court. The only point on which the Arizona Supreme Court disagreed with the Court of Appeals in the instant case concerned the issues that may be raised in a proceeding under Section 204, the payment under protest section, discussed below. The Supreme Court held that under Section 204, issues of classification and valuation, as well as constitutionality, may be raised.

It is also clear, as the Arizona Court of Appeals held in this case, that the Appeal Board lacks authority to consider constitutional issues.

The other statutory route to the courthouse from the administrative proceeding is provided by A.R.S. § 42-204 (also set forth in Appendix C). Constitutional issues may be raised in proceedings brought under that statute. However, the Section 204 procedure may be invoked only after the taxpayer (or in this case voluntary contributor) has made his payment under protest. Payment under protest is an absolute precondition to invocation of the Section 204 procedure.

Every year since 1964, the first year in which it was authorized to do so, the Project has made voluntary contributions in lieu of ad valorem taxes. At issue in this case are the determinations of the appellee, Department of Property Valuation (Department) concerning the "full cash value" of the Project's property for the years 1970, 1971, and 1972. The Department determined the full cash value of the Project's property for these three years, respectively, to be $186,429,000, $212,800,000 and $256,424,000. For each

year, the Project appealed the Department's valuation to the Appeal Board, contending, *inter alia*, that (1) in determining full cash value, the Department had failed to apply the same standards to the Project that it applied to the two other major distributors of electricity within the State of Arizona, in violation of the Fourteenth Amendment's equal protection guarantee, and (2) that for other, non-constitutional reasons, the value placed on the Project's property was too high.

For the three applicable years, the Appeal Board determined that the appropriate valuations were $172,000,000 for 1970, $193,829,000 for 1971 and $230,673,000 for 1972. The reduction was awarded on non-constitutional grounds, since, as noted, the Appeal Board lacks authority to consider constitutional issues.

For each of these three years the Department appealed to the Superior Court, pursuant to A.R.S. § 42-151, and the three appeals were consolidated. Being satisfied with the Board's decision, the Project did not appeal.

Thus, the case came before the Superior Court, not as an appeal under protest by the Project, nor, indeed, as an appeal of any kind by the Project, but solely as an appeal brought by the appellee Department, under a statute that clearly precludes consideration of the Project's contention that the valuation of the Project's property, in comparison with the methods used in valuing for tax purposes the property of other taxpayers in the State of Arizona, violate the Project's Fourteenth Amendment rights.

The Project filed its Motion for Summary Judgment before the Superior Court, raising, *inter alia*, its Fourteenth Amendment argument. The Superior Court agreed that the Project's Fourteenth Amendment rights had been violated, and granted the Motion for Summary Judgment.

On appeal, the Court of Appeals reversed, holding that under the Section 151 procedure, the Superior Court could consider issues of valuation, but not constitutionality, and that under the Section 204 procedure, the Court could consider constitutional but not valuation issues. The Court nevertheless held that since proceedings could be brought under both statutes, and then consolidated for hearing, there was no violation of equal protection or due process rights. Accordingly, the judgment of the Superior Court was reversed. The Arizona Supreme Court, sitting In Banc, disagreed with the Court of Appeals only with regard to the scope of the issues that could be raised in a Section 204 proceeding. The Supreme Court held that in a Section 204 proceeding — which this case is not — a taxpayer may raise both valuation and also constitutional issues.

THE QUESTION PRESENTED IS SUBSTANTIAL

There can be no doubt that this case falls within the ambit of 28 U.S.C. Section 1257 (2), which provides a right of appeal to this Court from judgments or decrees of "the highest court of a State in which decision could be had. . . where is drawn in question the valid-

ity of a statute of any state on the ground of its being repugnant to the Constitution. . . of the United States, and the decision is in favor of its validity."

It is equally clear that the federal question is substantial. Fundamental to the Fourteenth Amendment's due process guarantee is the right to be heard. Very simply, the Arizona statutes as structured, and as interpreted by the lower courts, are incapable of affording the Project a right to be heard on its contention that the valuation procedures used for its property vis-a-vis the property of the other major distributors of electricity in the State of Arizona discriminates against the Project, so as to deny its Fourteenth Amendment rights of equal protection.

It is conceded on all sides that the Project has a due process right to raise its equal protection claim. Implicit in this basic premise is the further proposition that foreclosing the Project from being heard on this issue would violate both its due process and equal protection rights.

The appellee persuaded the Arizona appellate courts, however, that the Arizona statutory remedy is adequate because the Project's federal constitutional position can be asserted in a Section 204 proceeding. The Court of Appeals reasoned that the Project could pay under protest, file a Section 204 appeal, and then consolidate with the Department's appeal under Section 151. Under the Supreme Court's holding, such a consolidation would be unnecessary, because all issues can be raised in a Section 204 proceeding. But under either court's view, the only way that the Project can raise its conceded constitutional right is to (1) protest an evaluation with which it agrees, (2) pay a contribu-

tion that the highest state authority that has considered the matter (the Appeal Board) says it does not owe, and (3) appeal from a decision that it has no desire to appeal.

This, in the Arizona appellate courts' view, satisfies due process. The Arizona appellate courts are wrong. The State of Arizona has failed to make available any procedure in which the Project can assert its constitutional claim. This failure is a denial of the Project's due process and equal protection rights. In the absence of a constitutionally acceptable appeal procedure, the State of Arizona is bound by the decision of its own Appeal Board.

There are two basic reasons why the payment under protest procedures of Section 204 are constitutionally inadequate for a taxpayer or voluntary contributor in the position of the Project.

1. In the first place, the Project did not appeal in this case. It has no intention of appealing the decision of the Appeal Board, because that decision was favorable to it. The full cash value decision reached by the Appeal Board is acceptable to the Project, and it did not, and will not, appeal.

The only appeal brought in this case was brought by the Department of Property Valuation. The case was appealed pursuant to the only appellate mechanism made available in this kind of case by the Arizona Statutes: A.R.S. § 42-151. This Statute, Section 151 — under which the appeal in this case was brought and

had to be brought — has been interpreted by the Arizona courts to preclude consideration of any constitutional issue.

In short, the only available appellate remedy — and the one which was in fact taken — forecloses the Project from raising the federal constitutional issue that everyone agrees it has a constitutional right to raise. Surely such a deprivation of due process and equal protection raises a substantial federal question.

Neither Section 204 nor any other provision of the Arizona statutes was available to the Salt River Project. The Project is not a protesting taxpayer, because it has nothing to protest. The only appeal is from the decision of the Board of Property Tax Appeals, whose decision the Project does not wish to appeal, because it is favorable to it. This appeal — the only appeal — was brought by the Department of Property Valuation, and brought under Section 151, under which all Arizona courts that have spoken on the matter have held that no constitutional argument may be raised.

Thus, the State of Arizona has left the Project without a means to raise its federal constitutional issue. This is the clearest possible example of due process denial because "Due process requires that there be an opportunity to present every available defense." *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932).

2. Even if Section 204 were available to the Project, the decisions of this Court make it very clear that limiting the assertion of the appellant's constitutional rights to the conditions set by Section 204 is itself unconstitutional.

In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) this Court held that conditioning the exercise of the right to vote in state elections on the payment of a tax was unconstitutional, notwithstanding the Court's observation that "While the right to vote in federal elections is conferred by Art. I, § 2 of the Constitution . . . the right to vote in state elections is nowhere expressly mentioned." 383 U.S. at 665. Surely, rights that are expressly guaranteed by the federal constitution should also be protected against the condition that they be exercised only upon payment of a tax. *San Antonio Ind. School Dist. v. Rodriguez*, 411 U.S. 1 (1973).

That is precisely the condition imposed by Section 204. Indeed, the constitutional offensiveness is even more pronounced in the instant case than in *Harper*. In this case, as a condition to the exercise of its constitutional rights, the Project is required to pay a tax which the highest state authority to consider the matter on the merits — the Board of Property Tax Appeals — has concluded that the Project does not even owe.

The Court of Appeals' reliance on *Lindsey v. Normet*, 405 U.S. 56 (1972) and *Yakus v. United States*, 321 U.S. 414 (1944) is wide of the mark. In *Lindsey*, this Court upheld the constitutionality of Oregon statutes dealing with Forcible Entry and Detainer against the contention, *inter alia*, that limiting the triable issues to the question of the tenant's default violated due process and equal protection. And in *Yakus*, the Court upheld the constitutionality of that feature of

the Emergency Price Control Act of 1942 that precluded the defendant from asserting the validity of the regulations in the context of his criminal prosecution.

The controlling distinctions between this case and *Lindsey* and *Yakus* are precisely the same two features, discussed above, that render the Section 204 proceeding constitutionally inadequate. In both *Lindsey* and *Yakus*, the relevant government had in fact provided a procedure whereby the excluded issue (in both of those cases a non-constitutional issue) could be raised. Here, the State of Arizona simply has no procedure under which a taxpayer satisfied with the Board of Property Tax Appeals decision — but who finds itself in the position of respondent before the Superior Court because the Department has appealed — can assert its constitutional rights. Since it is the State Department of Property Valuation that will take such an appeal, the case must necessarily be brought under Section 151, under which everyone agrees that the constitutional issue may not be raised.

In *Lindsey* and also in *Yakus*, this Court was careful to point out the characteristic that distinguishes those cases from the present controversy. In *Lindsey*, after quoting from its earlier decision in *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) that "due process requires that there be an opportunity to present every available defense", the Court clarified that that principle did not render the Oregon Forcible Entry and Detainer statute constitutionally infirm because "there are available procedures to litigate any claims against the landlord cognizable in Oregon." 405 U.S. at 66.

The Court in *Yakus* also distinguished between the *Yakus-Lindsey* prototype, and the instant case:

> "There is no constitutional requirement that that test be made in one tribunal rather than in another, *so long as there is an opportunity to be heard and for judicial review which satisfies the demands of due process*, as is the case here.... And we are pointed to no principle of law or provision of the Constitution which precludes Congress from making criminal a violation of an administrative regulation, by one *who has failed to avail himself of an adequate separate procedure* for the adjudication of its validity...." 321 U.S. at 444 (Emphasis added)

Here, it is not just a matter of the adequacy of the separate procedure. There is no separate procedure. Section 151 will not do, because it precludes any assertion of the constitutional issue. And Section 204 will not do, because it is inapplicable to this appellant.

The interpretations of the Arizona statute by the lower courts do not avoid, and indeed they squarely raise, the federal constitutional issue. The Arizona Supreme Court has ruled, contrary to the view of the Court of Appeals, that both valuation and also constitutional issues may be raised in a Section 204 proceeding. Both courts are in agreement that constitutional issues may not be raised in a Section 151 proceeding. But neither of these holdings has any bearing on the denial of this appellant's constitutional right to a statutory scheme which provides some remedy by which it may assert its constitutional argument. The Arizona statutes simply do not provide such an opportunity.

As such, the statutes are constitutionally defective and the determination of the Board of Property Tax Appeals — the last tribunal operating according to constitutionally acceptable principles to consider the matter — must prevail.

The federal issue is clearly substantial. This case differs materially from *Yakus* and *Lindsey*, and the differences are central to the rationale of both those cases and to basic precepts of due process. It is respectfully submitted that jurisdiction should be noted, and the case set down for briefing and argument on the merits.

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF ARIZONA
In Banc

DEPARTMENT OF PROPERTY VALUATION, *Appellant,* v. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT AND BOARD OF PROPERTY TAX APPEALS OF THE STATE OF ARIZONA, *Appellees.*	No. 12805-PR

Appeal from the Superior Court
of Maricopa County
Honorable D. L. Greer, Judge

Reversed with Directions

Opinion of the Court of Appeals, Division One,
___ Ariz.App. ___, 551 P.2d 559 (1976)

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STRUCKMEYER, Vice Chief Justice

This petition for review was brought by the Salt River Project Agricultural Improvement and Power District. It sought to vacate a decision of the Court of Appeals, Division One, ___ Ariz.App. ___, 551 P.2d 559 (1976), reversing a summary judgment granted in the Superior Court in favor of the District. We accepted review to correct certain statements made in the decision which limited the scope of the Arizona statute, A.R.S. § 42-204.

In the years 1970, 1971 and 1972, the District appealed to the State Board of Property Tax Appeals to reduce the valuation of its property as fixed for tax contribution purposes by the State Department of Property Valuation under A.R.S. § 45-2201, et seq. The Board of Property Tax Appeals ordered the valuation reduced for each of the stated three years.

Pursuant to A.R.S. § 42-151, the Department appealed to the Superior Court, where the appeals were consolidated for disposition. The Superior Court summarily entered judgments favorable to the District, and the Department appealed to the Court of Appeals. That court reversed and remanded for proceedings consistent with its decision. In the course of its decision, the Court of Appeals stated that a taxpayer cannot test the issue of the valuation of his property in a suit brought under the authority of A.R.S. § 42-204. We are of a contrary view.

This language, to be found in the prior case of County of Maricopa v. Chatwin, 17 Ariz.App. 576, 582, 499 P.2d 190, correctly states the Arizona law:

"First, let us state that in our opinion the administrative appeal and/or direct appeal procedures culminating in a § 42-151 appeal to the Superior Court do not constitute the exclusive means by which a dissatisfied taxpayer may question the factual correctness of the classification or valuation of his property as contended by the taxing authorities. Rather, it is our opinion that these same issues may be raised in a § 42-204, subsec. C suit for refund after payment under protest. While the application of the doctrine requiring exhaustion of administrative remedies as a prerequisite to resort to the courts might at first glance appear to require a contrary result, we are of the opinion that a review of the peculiar statutory provisions here involved indicates a legislative intention to provide alternative remedies and, in fact, to preserve to the taxpayer in its totality his § 42-204, subsec. C remedy which previously existed. Our research into the statutory history of the reference in § 42-204, subsec. C to taxes 'illegally collected' reveals that this same language has been used

since the Struckmeyer Code of 1928 without change. Therefore, it cannot now be argued that these words were intended to restrict § 42-204, subsec. C actions for refund to the raising of constitutional discrimination questions. It is our opinion that a dissatisfied taxpayer desiring to raise questions concerning both the factual correctness of the classification or valuation on his property and also questions concerning unconstitutional discrimination may first avail himself of a § 42-151 remedy insofar as concerns the factual correctness of the classification and valuation of his property, and later present his discrimination questions in a § 42-204, subsec. C action for refund, or he may choose to wait and present all of these questions in the § 42-204, subsec. C action without resort to the administrative remedies. Of course, if both § 42-151 and § 42-204, subsec. C actions are pending at the same time relating to the same property, it might well be that these pending actions should be consolidated in the interest of all concerned." [Footnote omitted]

Any statement or suggestion in the instant case which is not consistent with the foregoing quoted language is expressly disapproved.

The judgment of the Superior Court is reversed and this cause remanded for further consideration as directed by the Court of Appeals, ___ Ariz.App. __ , 551 P.2d 559.

FRED C. STRUCKMEYER, JR.
Vice Chief Justice

CONCURRING:

JAMES DUKE CAMERON, Chief Justice

JACK D. H. HAYS, Justice

WILLIAM A. HOLOHAN, Justice

FRANK X. GORDON, JR., Justice

APPENDIX B

DEPARTMENT OF PROP. VALU. v. SALT RIVER PROJECT, ETC.

Cite as 551 P.2d 559

27 Ariz.App. 110

DEPARTMENT OF PROPERTY VALUATION, *Appellant*,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT and Board of Property Tax Appeals of the State of Arizona, *Appellees*.

No. I CA-CIV 2647.

Court of Appeals of Arizona,
Division 1,
Department B.
June 29, 1976.
Rehearing Denied Aug. 17, 1976.

Department of Property Valuation appealed from State Board of Property Tax Appeals' reduction of Salt River Project Agricultural Improvement & Power District's property valuations, as found by Department in each of three years. After consolidation of appeals the Superior Court, Maricopa County, Cause Nos. C-239224, C-253895, C-268093, D. L. Greer, J., granted Project summary judgment, and Department appealed. The Court of Appeals; Jacobson, P. J., held that Board is not limited to choosing between appraisal opinions before Board as to valuation, but, rather, may independently determine valuation from evidence presented to it; that appraisers' affidavits were sufficient to overcome statutory presumption

that Board's decisions were correct and thus precluded a grant of summary judgment for Board on basis of statutory presumption that Board's decisions are correct; that statute, which authorizes property tax appeals to superior court in regard to valuation or classification, does not deny equal protection in limiting the issues to be litigated to the issues of classification and valuation; that Board, when considering a taxpayer-initiated review, cannot consider issues of unconstitutional discrimination, but, rather, is limited to consideration of classification and valuation, that statutory scheme, under which dissatisfied taxpayer is provided a forum to contest valuation but may not raise issue with regard to unconstitutional discrimination at such a proceeding, under which he is provided a forum to raise issues of unconstitutional discrimination but may not raise issues of valuation at that proceeding and under which the proper procedure is to consolidate the two proceedings for trial, comports with due process; and that statutory scheme did not deny due process to project.

Reversed and remanded for further proceedings.

Bruce E. Babbitt, Atty. Gen. by Robert F. Brunn, James D. Winter, Mary Z. Chandler, Asst. Attys. Gen., and Donald P. Roelke, Sp. Asst. Atty. Gen., Phoenix, for appellant.

Jennings, Strouss & Salmon by Clarence J. Duncan, Leo R. Beus, Phoenix, for appellee Salt River Project Agricultural Improvement & Power Dist.

OPINION

JACOBSON, Presiding Judge.

This appeal requires the court, among other issues, to consider the constitutionality of the statutes allowing the Department of Property Valuation to appeal to the Superior Court from a determination made by the State Board of Property Tax Appeals.

The appellee, Salt River Project Agricultural Improvement & Power District (Project) is not subject to ad valorem taxes of the State of Arizona. Art 13, § 7 and Art. 9, § 2 of the Arizona Constitution. However, pursuant to A.R.S. § 45-2201 *et seq.*, the Project is authorized to make voluntary contributions in lieu of the ad valorem taxes if it chose to do so. Since 1964, when this enabling legislation was enacted, the Project has each year made voluntary contributions in lieu of ad valorem taxes. The amount of the contribution is determined in the same manner as the amount of ad valorem taxes are determined, that is, by applying appropriate tax rates to the "full cash value" of the contributor's property. In this case we are concerned only with that valuation.

In the years 1970, 1971 and 1972, the appellant, Department of Property Valuation (Department) determined, pursuant to A.R.S. § 45-2202(B) the "full cash value" of the Project's property to be $186,429,000.00, $212,800,000.00 and $256,424,000.00, respectively. In each of these years, the Project appealed the Department's valuation to the Board of Property Tax Appeals (Appeal Board) and in each year the Appeal Board reduced the valuation found by the Department to $172,000,000.00 in 1970, to

$193,829,000.00 in 1971 and to $230,673,000.00 in 1972. Each year a reduction was made, the Department duly appealed, pursuant to A.R.S. §42-151,[1] to the Superior Court of Maricopa County.

All three appeals were subsequently consolidated into one proceeding. After consolidation and discovery, the Project filed a motion for summary judgment on two grounds: (1) that in view of the statutory presumption (A.R.S. § 42-152(B)) of the correctness of the Appeal Board's determination of valuation, there were no material issues of disputed fact, and (2) in any event A.R.S. § 42-151 *et seq.* is unconstitutional, and therefore the last legal body having jurisdiction (the Appeal Board) should be affirmed. The trial court granted summary judgment on both grounds and the Department has appealed.

PROPRIETY OF GRANTING SUMMARY JUDGMENT

We are favored in this matter by a comprehensive opinion written by the trial court, setting out in detail why, in its opinion, the Project was entitled to summary judgment. The basis of the trial court's decision was that Arlo Wollery, Director of the Department, testified through deposition, that the valuation of property is more an art than an exact science and that qualified appraisers looking at the same property and

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[1] At the time of the first appeal in this matter, appeal to the superior court from a determination of the Appeal Board was under A.R.S. § 42-147. Since both parties agree the present statute is the same as the former insofar as pertinent to the issues for determination in this appeal, the present statutory citation will be utilized throughout this opinion.

using the same methods of valuation could differ by 10%. The trial court then found that the same valuation evidence which was presented to the Appeal Board, would be presented to him as a trial judge. Since the valuations found by the Appeal Board were within 10% of those set by the Department, the trial court felt compelled by A.R.S. § 42-152(B), which gives the Appeal Board's determination a presumption of correctness, to find that the evidence presented by the Department did not overcome this presumption and that the Appeal Board's determination had to be affirmed.

The Department first attacks this reasoning by contending that the Appeal Board is not an "appraisal board" and therefore is not entitled to draw its own conclusions from the evidence presented to it, but is limited to an evaluation of the appraisal opinions in evidence. Since the only expert appraisal opinions the Appeal Board had, all of which set the Project's valuation equal to or in excess of the Department's initial valuation, the Appeal Board had "no substantial evidence" to justify its valuation and therefore its determination was not entitled to the statutory presumption which was the basis for the trial court's ruling. We disagree.

While it is true that the Appeal Board's determination must be supported by substantial evidence, *Arizona Copper Company Ltd. v. State*, 15 Ariz. 9, 137 P.417 (1913), this does not mean that it is bound by the opinions of the appraisers or experts which appeared before it. *Sun City Water Co. v. Arizona Corporation Commission*, 26 Ariz.App. 304, 547 P.2d 1104 (1976). In our opinion, the Appeal Board was es-

tablished at least at the time pertinent here, to review on an administrative appellate level, decisions as to valuations of taxpayer's property. *See*, A.R.S. § 42-141; A.R.S. § 42-245. As such an administrative appeals board, in our opinion, it has authority to reduce the valuation set initially by the taxing authority and in this regard is allowed to determine the proper valuation of property provided that it does so on substantial evidence. In this case there is no contention that the valuation placed by the Board on the Project's property was not the result of its independent evaluation of the data placed before it or that such data would not constitute substantial evidence for its evaluation. Rather, the Project contends that it is limited to choosing between the opinions before it as to valuation and may not independently determine this valuation. We find no legislative enactments which would support such a contention and therefore reject it.

We next turn to the Department's contention that if, in fact, the Appeal Board was allowed to independently evaluate the Project's property, it made a prima facie showing before the trial court that this valuation was improper so as to preclude the granting of summary judgment against it. This in turn requires a determination of the weight to be given the statutory presumption of correctness of the Appeal Board's valuation which statutory presumption the trial court relied on in granting summary judgment. A.R.S. § 42-152(B) provides:

> "B. At the hearing [before the Superior Court] both parties may present evidence of any matters that relate to the classification or to the full cash value of the property in question as of the date of the assessment. *The valuation or classification as approved by the appropriate state or county authority shall be presumed to be correct and lawful.* (emphasis added)

It is not disputed that the Appeal Board is "the appropriate state authority" and thus entitled to the statutory presumption of correctness.

The Arizona Supreme Court has recently classified the statutory presumption as "one of fact, however, and is overcome when 'evidence contradicting the presumption is received'." *Department of Property Valuation of the State of Arizona v. Trico Electric Cooperative, Inc.*, 113 Ariz. 68, 546 P.2d 804 (1976). Did the Department present evidence contradicting the decision of the Appeal Board? Attached to the Department's opposition to the Project's motion for summary judgment were affidavits of three appraisers setting forth their opinions as to the valuation of the Project's property, all of which exceeded the valuation found by the Appeal Board. There is no doubt that these appraisers would be qualified to give their opinion as to the valuation on a trial of this matter. Also, there is no doubt that if they had testified at time of trial their opinion as to valuation would have been "evidence".

In our opinion, this "evidence" was thus sufficient to overcome the presumption of fact that the Appeal Board decision was correct and at least precluded the granting of summary judgment based upon the statu-

tory presumption alone. It is further our opinion that this statutory presumption merely gives rise to a burden of proof requirement and as pointed out in *Department of Property Valuation v. Trico Electric Cooperative, Inc., supra,* "that the Department must bear the burden of proving that the assessment is insufficient when it appeals from the decision of the Board."

We therefore hold that the trial court incorrectly granted summary judgment based upon the statutory presumption created by A.R.S. § 42-152(B).

CONSTITUTIONALITY OF A.R.S. § 42-123(B) INSOFAR AS IT DEALS WITH THE RIGHT OF THE DEPARTMENT TO APPEAL A DECISION OF THE APPEAL BOARD

Since we have held that the trial court improperly granted summary judgment under the facts of this case, we next turn to the second ground upon which the trial court relied in granting summary judgment, that is, the unconstitutionality of the statutory scheme for appeals of the decision of the Appeals Board.

In order to properly comprehend the Project's attack on the constitutionality of the statutory scheme involved in the determination of taxpayer liability for taxes, a background in the statutory procedures and prior case law interpreting those procedures is necessary.

There are basically two methods by which a taxpayer may contest the amount of taxes levied against his real property, be that taxpayer one in the position of the Project, whose property is assessed by the Department or an individual resident owner where

property is assessed by the county assessor. The most commonly utilized procedure culminates in a superior court review under A.R.S. § 42-151 and 42-152.[2] The taxpayer, however, has an option as to how he can arrive at a superior court determination under A.R.S. § 42-151. One route he can follow is known as the "administrative appeal." This involves the taxpayer seeking a review of the assessing body's determination of classification or valuation by the Appeal Board. A.R.S. § 42-245(A)(2). Any party dissatisfied with the Appeal Board determination may then appeal to the superior court under A.R.S. § 42-151.

The second procedure which culminates in a § 42-151 court review is known as the "direct appeal". Under this procedure the taxpayer may seek direct court review, under A.R.S. § 42-151, of the assessing body's determination as to classification or evaluation, bypassing the Appeal Board's administrative determination of these issues. A.R.S. § 42-245(A)(1).

It is important to note, however, that the superior court's review under A.R.S. § 42-151, whether that review is the result of an administrative appeal or a direct appeal, is limited to determining the correctness of the classification or valuation of the taxpayer's property and other issues such as unconstitutional discrimination cannot be heard in that proceeding. *McCluskey v. Sparks,* 80 Ariz. 15, 291 P.2d 791 (1955);

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[2] See footnote 1, formerly A.R.S. § 42-147. A.R.S. § 42-151 provides in part: "An appeal to the superior court relative to valuation or classification of property is commenced by filing a notice of appeal with the superior court. . . ."

Maricopa County v. Chatwin, 17 Ariz.App. 576, 499 P.2d 190 (1972).

A wholly separate method of contesting tax liability is the payment of the taxes due under protest and a suit for refund of those taxes contended by the taxpayer to be "illegally collected". A.R.S. § 42-204(C). The utilization of this method has two prerequisites: (1) the taxes must be due (the first half taxes in any given year are due on September 1 and become delinquent on November 1, A.R.S. § 42-341);[4] and (2) the taxpayer must pay these taxes "under protest". *Maricopa County v. Arizona Citrus Land Co.*, 55 Ariz. 234, 100 P.2d 587 (1940).

Again, it is important to note what issues may and may not be litigated in a § 42-204 payment under protest proceeding. Issues of classification or valuation may not be litigated in this setting, the exclusive method of determining these issues being a review under A.R.S. § 42-151. *Southern Pacific Company v. Cochise County*, 92 Ariz. 395, 377 P.2d 770 (1963); *Valley National Bank v. Apache County*, 57 Ariz. 459, 114 P.2d 883 (1941). On the other hand, issues of unconstitutional discrimination can be litigated in a 42-204 proceeding. *Maricopa County v. Chatwin*, *supra*;[5] *Drachman v. Jay*, 4 Ariz.App. 70, 417 P.2d 704 (1966).

[4] Insofar as the Project is concerned, its first half taxes shall be paid on the first Monday in November of each year. A.R.S. § 45-2202(E).

In summary then, the legislative scheme for contesting tax issues is that, if the issue is valuation, that issue must be decided in a court review under A.R.S. § 42-151 and issues of unconstitutional discrimination cannot be heard; if, however unconstitutional discrimination is an issue to be heard, then the taxpayer must pay his taxes under protest and sue for refund under A.R.S. § 42-204, and issues of valuation cannot be tried in that proceeding.

It is against this background that the Project raises the issue that the review procedure under A.R.S. § 42-151 is unconstitutional. The Project contends that limiting an appeal under A.R.S. § 42-151 to issues of valuation (full cash value) is a denial of equal protection and due process. This is a three-pronged attack. First, it is contended that the legislature may not constitutionally provide a forum to settle disputes among parties and limit the issues which may be litigated therein. Second, it is contended that the legislature may not constitutionally allow court review of an administrative body (Appeal Board) on more limited issues than were considered by the administrative body. Third, it is contended that the limiting of issues in the A.R.S. § 42-151 proceeding results in the loss of

[5] As we stated in *Chatwin*:
"The taxpayer who desires to raise non-classification or non-full cash value issues such as unconstitutional discrimination, is left to the previously existing remedies—the payment of the tax under protest and the filing of an action for refund under the provisions of A.R.S. § 42-20[illegible]. . . ."

the right to interpose reasonable and legitimate defenses, and thus is a denial of due process.

Turning to the Project's first contention, that is, that the legislature may not constitutionally limit issues to be litigated, we are of the opinion that this matter is controlled by *Lindsey v. Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972). In that case, the Oregon statutes on Forceful Entry and Detainer were attacked on the ground that the only triable issue was the tenant's default and issues as to the landlord's breach were precluded. The court held:

> "It is readily apparent that prompt as well as peaceful resolution of disputes over the right to possession of real property is the end sought by the Oregon statute. It is also clear that the provisions for early trial and simplification of issues are closely related to that purpose. The equal protection claim with respect to these provisions thus depends on whether the State may validly single out possessory disputes between landlord and tenant for especially prompt judicial settlement. In making such an inquiry a State is 'presumed to have acted within [its] constitutional power despite the fact that, in practice, [its] laws may result in some inequality.' " [citation omitted]
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> * * * * * *
>
> "Since the purpose of the Oregon Forceful Entry and Wrongful Detainer Statute is constitutionally permissible and since the classification under attack is rationally related to that purpose, the statute is not repugnant to the Equal Protection Clause of the Fourteenth Amendment." 405 U.S. at 74, 92 S.Ct. at 874.

What has been said of the Oregon statute on Forcible Entry and Detainer may be paraphrased by inserting the "administrative-direct appeal" procedure enacted by the legislature to handle disputes between the taxpayers and the taxing authorities when the issue for resolution is a classification or valuation of the taxpayer's property. As is pointed out in *Maricopa County v. Chatwin, supra*, the legislature has devised a scheme for the prompt determination of disputes involving the classification or valuation of taxpayers' property. This scheme envisions that the sole issues to be determined are classification and valuation. In our opinion that is a valid classification for equal protection purposes as these issues constitute the majority of disputes arising between the taxpayer and the taxing authorities. Likewise, the prompt disposition of these issues are provided so as to settle these issues prior to the due date of the taxes involved. We therefore find, at least for equal protection purposes, that the classification made by the legislature is reasonable and the procedures of limitation placed upon the processing of these issues are rationally related to a constitutionally permissible purpose (speedy disposition prior to the tax becoming due) and are therefore constitutional.

The second contention made by the Project and concurred in by the trial court is that the Appeal Board in reaching its determination of valuation was allowed to consider unconstitutional discrimination which the trial court is unable to consider in a 42-151 proceeding and therefore the scheme is unconstitutional. We reject the underlying premise upon which this argument is based. The Appeal Board cannot, when considering a taxpayer initiated review, consider

issues of unconstitutional discrimination and is limited, like the trial court, to consideration of classification and valuation only. *Maricopa County v. Chatwin, supra.* In this case, there is no contention that the Appeal Board was confused as to the limitations on its power in considering the Project's appeal, and it properly limited itself to full cash value valuations and did not consider discrimination. It thus appears that the underlying due process defect found by the trial court — the inability to litigate issues in a § 42-151 appeal that were litigable before the Appeal Board — is simply not present.

The Project's third contention that the proceeding under A.R.S. § 42-151 is one in which it is denied the right to interpose reasonable and legitimate defenses (the issue of unconstitutional discrimination) is more serious in nature.

In considering this issue, it must be kept in mind that the executive function in any given tax year in setting classification and valuation of property for tax purposes is completed prior to September 1 when the taxes actually became due. This is true even if the administrative appeal to the Appeal Board is taken, that body being required to render its decision by July 25. A.R.S. §§ 42-145 and 42-245(A)(2). Thus, at the time the taxes for the first half of the year became due, both the taxpayer and the assessing department know what the executive determination of the tax liability will be.

At this juncture, if the taxpayer is dissatisfied with his tax picture either because he contends his property is unconstitutionally discriminated against or his valuation is improper, he may invoke the dual relief

previously outlined. He may file an appeal under A.R.S. § 42-151 contesting the valuation of his property and when the taxes become due on September 1, pay these taxes under protest and sue for refund, contesting the unconstitutional discrimination. The legislature specifically recognized this dual relief when the *taxpayer* is the dissatisfied party by providing in A.R.S. § 42-151(E), that:

> "All taxes levied and assessed against property on which an appeal has been filed *by the owner* thereof shall be paid under protest prior to the date the tax becomes delinquent . . . if such taxes are not paid prior to becoming delinquent . . . the court shall dismiss the appeal." (emphasis added)

The dissatisfied taxpayer is thus provided a forum to contest valuation (A.R.S. § 42-151 proceeding where unconstitutional discrimination may not be heard) and a forum to raise issues of unconstitutional discrimination (A.R.S. § 42-204 where issues of valuation will not be heard.) The proper procedure in such a case is a consolidation for trial of the § 42-151 proceeding and the suit for refund proceeding under 42-204. *See, Maricopa County v. Chatwin, supra.*

In our opinion, this duality of forums which provides complete relief to the taxpayer comports with due process. As was stated in *Lindsey v. Normet, supra:*

> "Nor does Oregon deny due process of law by restricting the issues in FED [Forcible Entry Detainer] actions to whether the tenant has paid rent and honored the covenants he has assumed, issues that may be fairly and fully litigated under the Oregon procedure. . . .

> " 'Due process requires that there be an opportunity to present every available defense.' [citations omitted] Appellants do not deny, however, that there are available procedures to litigate any claim against the landlord cognizable in Oregon." 405 U.S. at 65-66, 92 S.Ct. at 870.

The Project points out, however, that if it exercises its administrative appeal rights, is satisfied with the Appeal Board decision, the Department by exercising its appeal rights can deny it relief under A.R.S. § 42-204, to raise unconstitutional discrimination. The Project's argument is this: if it wins before the Appeal Board, the Department may wait until November 1, A.R.S. § 42-245(A), to file its § 42-151 appeal; in the meantime, the taxes become due on September 1 and in order to avoid the payment of interest, A.R.S. § 42-384, it must have paid its first half installment on taxes prior to November 1; being a satisfied taxpayer at this point (based upon the determination of the Appeal Board), the taxpayer is not required to pay his taxes under protest; having failed to pay under protest, this being a prerequisite to a suit under A.R.S. § 42-204, it is barred from seeking relief under this section and is thus barred from raising unconstitutional discrimination in reaching the valuation of its property.

We might tend to agree with this analysis if the sole avenue available to the Project for a court review under A.R.S. § 42-151 was the administrative appeal route. However, A.R.S. § 45-2204(A) provides in part that: "any district ... not satisfied with a determination made by the department ... pursuant to this article shall be entitled to the same remedies provided

for under title 42." One of the remedies available under Title 42 is the "direct appeal" approach provided by A.R.S. § 42-245.[5] This statute provides in part:

> "Any person dissatisfied with the valuation or classification of his property ... may appeal in the following manner:
>
> "1. To the superior court in the manner provided in § 42-151 on or before November 1."

In other words, administrative review in the Project's case by the Appeal Board is not a prerequisite to court action seeking a determination of valuation. As we have previously indicated, where the taxpayer is the moving (injured) party in the superior court under A.R.S. § 42-151, this system is constitutionally sound for he is afforded a method by which, while the 42-151 proceeding is pending, he may pay his taxes under protest protecting his 42-204 remedies and may move to consolidate both actions which grants to him full relief and therefore due process.

The question thus narrows itself to whether the state legislature may constitutionally provide a remedy, which may deprive those exercising it of due process, if alternative remedies are also provided which afford due process. A similar question was presented in *Yakus v. United States*, 321 U.S. 414, 64 S.Ct. 660, 88 L.Ed. 834 (1943). In *Yakus* the Defendant was charged in the District Court of Massa-

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[5] This statute on its face would appear to apply only to taxpayers whose property is assessed by the county assessor and reviewed by the County Board of Equalization. However, in our opinion, this statute provides a "remedy" available to the project under A.R.S. § 45-2204(A).

chusetts with criminal violations of the Emergency Price Control Act of 1942. In that action, the defendant attempted to raise the validity of the regulations under which he was charged as a defense to the criminal prosecution. Under the act, Congress had vested exclusive jurisdiction to determine the validity of the regulations promulgated under the Act with the "Emergency Court of Appeals" and the United States Supreme Court. The District Court rejected the tendered defense to the criminal action and the defendant was convicted. He appealed, contending among other things that such a procedure denied him due process by not allowing him to present all his defenses to the criminal prosecution. The court stated the issue thusly:

> "Congress . . . gave clear indication that the validity of the Administrator's regulations or orders should not be subject to attack in criminal prosecutions for their violation, at least before their invalidity had been adjudicated by recourse to the protest procedure.
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> * * * * * *
>
> "We come to the question whether the provision of the Act, so construed as to deprive petitioners of opportunity to attack the Regulation in a prosecution for its violation, deprive them of the due process of law guaranteed by the Fifth Amendment." 321 U.S. at 430-431, 64 S.Ct. at 670.

After discussing the necessity for uniform interpretation of the act by one tribunal and the adequacy of the remedy provided to test the validity of the regulation, the court concluded:

> "Unlike most penal statutes and regulations whose validity can be determined only by running the risk of violation [citation omitted], the present statute provides a mode of testing the validity of a regulation by an independent administrative proceeding. There is no constitutional requirement that the test be made in one tribunal rather than in another, *so long as there is an opportunity to be heard and for judicial review which satisfies the demands of due process*, as is the case here [citations omitted].
>
> "And we are pointed to no principle of law or provision of the Constitution which precludes Congress from making criminal the violation of an administrative regulation, by one *who has failed to avail himself of an adequate separate procedure* for the adjudication of its validity. . . ." 321 U.S. at 444, 64 S. Ct. at 667. (emphasis added)

Applying the rationale of *Yakus* to the alternate procedures provided by the legislature to the Project in this case, we see no constitutional infirmities in denying the Project a defense of unconstitutional discrimination in a § 42-151 proceeding (as the defense of invalidity was denied *Yakus* in the criminal prosecution) as long as a remedy (by direct appeal, payment under protest and consolidation of actions) existed by which these issues could be litigated and which the Project failed to invoke (as *Yakus* failed to avail himself of the separate procedure to test the validity of the regulations.)

We therefore hold, insofar as the Project is concerned, that the existing statutory procedure does not deny it due process and is therefore constitutional.

The judgment of the trial court is reversed and the matter remanded for further proceedings consistent with this opinion.

SCHROEDER and WREN, JJ., concur.

APPENDIX C

§ 42-151. Property tax appeals to superior court; procedure; payment of tax as prerequisite to appeal

A. An appeal to the superior court relative to valuation or classification of property is commenced by filing a notice of appeal with the superior court of the county where the property which is the subject of the appeal is located, unless the appeal is for a private car company or an airline company or the property was valued by the department and is located in more than one county, in which case the appeal is commenced by filing a notice of appeal with the superior court of Maricopa county.

B. The notice of appeal shall contain a statement of the reasons why the valuation or classification is excessive or erroneous.

C. The clerk of the superior court shall docket the appeal in the name of the appellant as plaintiff and of the state or county, whichever is appropriate, and the department as defendants except in an appeal pursuant to § 42-123, subsection B, paragraph 6, in which case the clerk of the superior court shall docket the appeal with the department as plaintiff and the person in whose name the property is listed as defendant.

D. A copy of the notice of appeal shall be served on the defendant or defendants and the state board of tax appeals within ten days of filing, in the manner provided for service of process in the rules of civil procedure or by certified or registered mail. An affidavit showing such service shall be filed with the clerk of the court. In an appeal taken pursuant to § 42-123,

subsection B, paragraph 6, service shall be on the person in whose name the property is listed at the address shown on the then existing tax roll.

E. All taxes levied and assessed against property on which an appeal has been filed by the owner thereof shall be paid under protest prior to the date the tax becomes delinquent. A receipt shall be given for the amount of such tax paid, and within forty-five days a copy of the receipt shall be filed by the owner with the clerk of the court in which the appeal is docketed. If such taxes are not paid prior to becoming delinquent, or if a copy of the receipt for payment is not so filed, the court shall dismiss the appeal.

F. The fee of a plaintiff in a civil action shall be paid to the clerk of the superior court by any taxpayer appealing.

§ 42-152. Hearing of appeal; judgment; enforcement; correction of assessment roll

A. The superior court shall hear the appeal within ninety days after the appeal is docketed, with or without a jury, unless both parties file a written agreement with the court for a postponement.

B. At the hearing both parties may present evidence of any matters that relate to the classification or to the full cash value of the property in question as of the date of its assessment. The valuation or classification as approved by the appropriate state or county authority shall be presumed to be correct and lawful.

C. If the court finds that the valuation is excessive or insufficient, the court shall find the full cash value of the property. If the court finds that the classification is in error, it shall determine the correct classi-

fication. If the assessment was excessive, the court will render judgment for the taxpayer and against the state or county, whichever is appropriate, in an amount equal to the excess in taxes levied and assessed. If the assessment was correct, the action shall be dismissed with costs against the plaintiff except in appeals taken pursuant to § 42-123, subsection B, paragraph 6.

D. If the court finds the assessment is deficient, the judgment shall be for the state or county, whichever is appropriate, and against the taxpayer for the costs of the appeal and the taxes due on the property in excess of the amount originally levied and assessed. The judgment shall be a lien upon the real and personal property of appellant with like effect as though the assessment had originally been in the amount of the judgment, and execution may issue upon the judgment.

E. When judgment is awarded to a taxpayer who paid his taxes to the county treasurer, the judgment shall be paid by the county treasurer of the county in which the property is located out of sums collected from property taxes during the next fiscal year, unless there are sufficient sums available in funds budgeted for that purpose by the county to allow an immediate refund, or the amount of the judgment may be credited toward any taxes which may be remaining due on the property which is the subject of the appeal, subject in either case to the approval of the board of supervisors. The amount of the judgment shall then be subtracted from the sums due to the state and other political subdivisions in the next fiscal year in proportion to the amount each received from the overpayment of taxes made by appellant. The state and

any political subdivision affected by the judgment shall include in their budgets for the next fiscal year the proportional amount of the judgment for which each is liable. Any increase in the budget because of the portion of the judgment being included therein shall not be subject to any budget limitation which may be provided by law.

F. Judgment in favor of an appellant who paid his taxes to the department shall be paid from the general fund of the state.

G. The clerk of the court shall transmit the judgment to the clerk of the board of supervisors or to the department, whichever is appropriate, and to the state board. The board of supervisors or the department, whichever is appropriate, shall, within fifteen days after receipt of the judgment unless appeal is taken as provided under the rules of civil procedure, correct the rolls in accordance with the judgment of the court.

§ 42-204. *Payment of tax as prerequisite to testing validity thereof; injunctive relief prohibited; refunds*

A. Any person upon whom a tax has been imposed or levied under any law relating to taxation shall not be permitted to test the validity or amount thereof, either as plaintiff or defendant, if any of the taxes levied and assessed against the property of appellant are not paid as provided in § 42-342, subsection B, paragraphs 2 and 3, except that in the case of private car companies the taxes shall be paid as provided in § 42-746.

B. No injunction, writ of mandamus or other extraordinary writ shall issue in any action or proceeding in any court against the state or an officer thereof, or against any county, municipality or officer thereof, to prevent or enjoin the extending upon the tax roll of any assessment made for tax purposes, or the collection of any tax imposed or levied.

C. After payment of the tax, an action may be maintained to recover any tax illegally collected, and if the tax due is determined to be less than the amount paid, the excess shall be refunded in the manner provided by this title.

Effective date of Laws 1969, Ch. 122, see note under § 42-145.

Cross References

Airline companies, administrative reviews and appeals, see § 42-706.

APPENDIX D

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IN THE SUPREME COURT OF THE STATE OF ARIZONA
In Banc

DEPARTMENT OF PROPERTY VALUATION *Appellant,* v. SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT AND BOARD OF PROPERTY TAX APPEALS OF THE STATE OF ARIZONA, *Appellees.*	NO. 12805-PR 1 CA-CIV 2647 Maricopa County C239224, C253895 and C268098 (Consolidated) NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Salt River Project Agricultural Improvement & Power District hereby appeals to the Supreme Court of the United States from the judgment of this Court in this case entered on November 5, 1976 and from the denial of the Motion for Rehearing entered December 15, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

DATED this 4th day of March, 1977.

Respectfully submitted,

JENNINGS, STROUSS & SALMON

By _____
Leo R. Beus
111 W. Monroe
Phoenix, Arizona 85003
Attorneys for Appellee
Salt River Project
Agricultural Improvement
& Power District

The Foregoing Instrument Is A Full,
True And Correct Copy Of The Original
On File In This Office.

Attest March 4, 1977
Clifford H. Ward
Clerk of Supreme Court,
State of Arizona

By _____ Deputy

CERTIFICATE OF SERVICE

I, LEO R. BEUS, caused to be served a copy of the Notice of Appeal, upon counsel for the appellant as required by Rule 33 of the U.S. Supreme Court Rules, by depositing a copy of said Notice of Appeal in the United States Post Office with first class postage prepaid and addressed to counsel of record for the Appellant and to the other counsels of record at:

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